

Application No. 09/977,984
Reply to Office Action of January 25, 2006

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REMARKS

In the Office Action of January 25, 2006, Examiner rejected claims 1-9 and 12-22 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2002/0176370 to Ohba et al. ("Ohba") in view of U.S. Patent No. 6,751,193 to Kudrimoti et al ("Kudrimoti").

Examiner appears to be rejecting the claims firstly on the basis of knowledge generally available to one of ordinary skill in the art in view of Ohba, and secondly in view of the combined teachings of Ohba and Kudrimoti. Applicant traverses the rejections as follows and addresses both grounds of rejection in turn.

Appropriate Test for Obviousness Under 35 U.S.C. §103

Applicant's invention, as claimed, relates to in one instance a method of attempting to establish a connection path between first and second nodes over at least one intermediary node in an MPLS domain established within an IP over ATM network. The method includes attempting to establish the connection after a time interval that is based on a previous interval of delay between two previous attempts, in which the time interval is greater than the previous interval of delay.

Applicant submit that the claimed invention is not obvious in view of the prior art cited by Examiner. Ohba is understood to describe label switched path loop detection methods at nodes of a communication network. As part of its loop detection, Ohba describes the re-transmission of label allocation messages after a prescribed period of time has elapsed, which is not the same as Applicant's claimed "back-off" delay intervals. On page 2 of the Action of January 25, 2006, Examiner also recognizes this difference, but contends that "it would have been obvious to attempt to establish a connection after a greater period of time...[since] a greater length of time between the unsuccessful attempts will utilize *system resources more efficiently*" [emphasis added]. Applicant respectfully disagrees with this contention of obviousness.

As stated in Applicant's response of November 11, 2005, an advantageous technical advance described in an Applicant's application cannot serve as a guide to a person of ordinary

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skill to modify the prior art to achieve Applicant's claimed invention (see for example *In re Dance*, 48 USPQ2d 1635 (Fed. Cir. 1998)). Examiner recognizes that more efficient usage of system resources may be obtained by way of Applicant's system as compared to the prior art, but yet is applying the efficiencies gained by Applicant's teachings as the guide to modify the prior art and reject Applicant's claims. This is improper use of Applicant's disclosure.

The burden of establishing *prima facie* obviousness is on Examiner. As per MPEP 706.02(j):

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). [Emphasis added]

Ohba, being directed to method of loop detection, does not provide teach nor suggest providing an increasing time delay re-transmission interval so as to provide the back-off connection mechanism of the claimed invention. The suggestion to modify Ohba in the manner Examiner suggests arises from Applicant's claimed invention itself. Using system resources efficiently is of course an obvious motivation to a person of ordinary skill, but it is the utilization of resources in the *manner* claimed by Applicant that is inventive, and Examiner has made no showing of *prima facie* obviousness in this respect. Examiner failed to show any motivation to modify Ohba in the manner claimed by Applicant, except of course by way of Applicant's disclosure itself.

This aspect of a "back-off" for increasing time interval between attempts to establish connections is found in all claims of Applicant's application. In view of the above, Applicant respectfully submits that *prima facie* obviousness has not been established, and that the

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obviousness rejections on the basis on knowledge available to one of ordinary skill in the art should be withdrawn.

Kudrimoti Reference

Examiner further rejected claim 1 as being obvious per on the basis of Ohba in view of Kudrimoti. Kudrimoti is understood to describe a method and apparatus for controlling data transfer between radio frequency ("RF") devices, such as in cellular code division multiple access ("CDMA") systems. Examiner contends that Kudrimoti teaches a back-off mechanism, and thus combined with Ohba, renders Applicant's claims obvious. Applicant respectfully disagrees for the following reasons.

First, the retry mechanism described in Kudrimoti, as understood by Applicant, is applied in a RF network between two end-to-end devices, such as between (i) a server/base station and (ii) a mobile terminal. Kudrimoti relates to an RF system whereas Ohba is grounded in MPLS technologies, which are vastly different. While both references are in the field of communications, one of ordinary skill trying to establish a connection over a MPLS domain would not look to teachings relating to adjusting bandwidth in RF transmissions between two stations for motivation. This is apparent as the references are in different fields and neither Ohba or Kudrimoti provide any reference to the other field. There is no indication in either reference of any suggestion or motivation to combine, or that such a combination would lead to success. As such, the environment of Kudrimoti is technically very different from the environment of Applicant's invention, where a connection is being established in a MPLS domain, traversing one or more multiple nodes in an ATM network, as per claim 1.

Further, the retry mechanism of Kudrimoti is used to allocate additional channels to a connection that has already been established. This is different from the claimed invention of establishing an *initial* connection, see for example Applicant's claim 1. Specifically, Kudrimoti teaches using a retry to request additional channels when data transfer latency over an established connection is too long: see at column 3 lines 34 to 37, where a radio link manager ("RLM") that is described allocating channels to augment data transfer over an existing link between a base station and a terminal. After an initial request for additional channels is sent out, the RLM determines if the requested channels to have been allocated, and if not, then the RLM

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sends out an further request for channels according to its retry mechanism. As such, Kudrimoti teaches only allocation of additional "bandwidth" to an existing point-to-point link and differs from Applicant's claims, which are directed to the establishment of an initial connection, in particular a connection over nodes in a MPLS domain.

Next, the operation of the retry mechanism of Kudrimoti differs from that claimed by Applicant. Kudrimoti provides a variable retry mechanism that is determined with tailored, detailed probability analysis, as set out at column 5, line 65 through column 6, line 53. Kudrimoti provides a relatively intensive (computationally) case-specific system for determining when a retry attempt is to be made. Meanwhile, Applicant's claimed invention provides a simple-to-implement delay interval having linear, staged and predetermined periods. Applicant's invention suffers none of the calculation complications mandated by Kudrimoti.

Based on at least the distinctions noted above and MPEP 706.02(j), the factors of prima facie obviousness have not been satisfied for Applicant's invention. There is (i) no motivation to combine the references, (ii) no reasonable expectation of success, and (iii) no teaching of all claim limitations by the combined references.

Since none of the factors of prima facie obviousness is made out by Ohba or Kudrimoti, whether taken alone or in combination, Applicant respectfully requests that all rejections under 35 U.S.C. §103 be withdrawn.

Request for Continued Examination

This response is accompanied by a Request for Continued Examination (RCE) to remove the Final status of the application. As per the enclosed RCE Transmittal PTO/SB/30, please charge the prescribed fee of \$790.00 for the RCE to deposit account No. 15-0633 of McCarthy Tétrault LLP.

The present response to Office Action is the submission required for the filing with a RCE.

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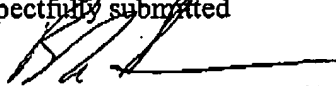
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No new subject matter is added with the present amendments. Applicant respectfully submits that all rejections in the Action of January 25, 2006 are traversed, and that the application is in condition for allowance. Examiner is invited to contact the undersigned to discuss this matter further, if necessary.

<u>June 26, 2006</u> Date	<p>Respectfully submitted</p>  <hr/> <p>Robert H. Nakano (Registration No. 46,498)</p> <p>McCarthy Tétrault LLP Box 48, Toronto Dominion Bank Tower Suite 4700, 66 Wellington Street West Toronto, Ontario M5K 1E6 Canada</p> <p>Telephone: (416) 601-7852 Facsimile: (416) 868-0673</p>
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